

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re AMERICAN REALTY CAPITAL	:	Civil Action No. 1:15-mc-00040-AKH
PROPERTIES, INC. LITIGATION	:	
	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
	X	

REPORT OF CLAIMS ADMINISTRATOR GILARDI & CO. LLP

Pursuant to the Court's April 19, 2021 Order (ECF No. 1333), the Declaration of Mishka Ferguson Regarding the Claim Administration Process and Remaining Disputed Claims is attached hereto as Exhibit A.

On June 30, 2021, the Claims Administrator, Gilardi & Co. LLP ("Gilardi"), certified to Class Counsel that it had completed the claims administration process and recommended distribution of the Net Settlement Fund to Class Members with validated and perfected claims. All told, Gilardi received 61,705 claims. Of the claims received, 26,878 are ineligible for inclusion in the distribution of the Net Settlement Fund for a variety of reasons, including but not limited to, deficient proof of a Class Period purchase or acquisition of the American Realty Capital Properties, Inc. ("ARCP") securities outlined in the Plan of Allocation; no Recognized Loss under the Plan of Allocation; or submission of a claim by an excluded party. In total 34,813 claims were validated and approved. Following exhaustive efforts, 14 claims remain in dispute as described below.

The settlement amount represents a recovery of more than 75% of claimants' losses. Gilardi will proceed to distribute the Net Settlement Fund, by August 31, 2021, to all claimants with valid and perfected claims. As permitted by the April 19, 2021 Order, Gilardi intends to take a reserve to account for the 14 disputed claims pending their resolution by the Court.

The small number of disputed claims all involve claimants who are current or former employees of ARCP who received Restricted Stock Units ("RSU") from ARCP in conjunction with their employment with the Company. The RSUs are subject to specific terms in written agreements entered into by the claimants with ARCP, and in the case of one claimant, as part of a settlement with ARCP. Gilardi has rejected these claims because:

1. The RSU grants were subject to vesting schedules and, for most claimants, none of the shares vested during the Class Period. The claimants, however, contend that the RSUs were "otherwise acquired" during the Class Period as required by the Class definition on the grant date,

irrespective of the vesting schedule, making them eligible for payment under the approved Plan of Allocation.

2. Even if the RSUs are considered eligible for consideration, the claimants received the RSU grants at a “purchase price” of \$0.00 which when the purchase price is incorporated into the Plan of Allocation formula, there is a \$0.00 Recognized Loss on these claims. The claimants, however, contend that the value assigned to the RSUs in the grant agreements should be designated the “purchase price” for use in calculating a Recognized Loss under the Plan of Allocation.

Gilardi has notified each of the 14 claimants that their disputed claims would be presented to the Court to determine whether the RSUs are eligible for payment under the Plan of Allocation, and if so, at what acquisition date and price. Counsel requests that the Court set up a procedure to review these disputes and suggests the following:

1. Concurrent with the submission of this Report, Counsel has provided to the Court, *in camera*, each disputed claim, the underlying documentation supporting each claim submitted by the claimants in support of their claims, and the correspondence between Gilardi and each claimant concerning the claims, and has served a copy of the submission on each of these disputed claimants;

2. By July 23, 2021, claimants provide to the Court additional information the Court requests, if any, to consider in its determination whether the RSUs are eligible for payment under the Plan of Allocation, and if so, at what acquisition date and price; and

3. If it would be helpful to the Court, it may wish to schedule a conference at the Court’s convenience to review each disputed claim.

DATED: July 9, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 9, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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